

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY  D.C.

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DANNY EVANS,

Plaintiff,

v.

No. 04-2790 B

GRINDER & HAISLIP  
CONSTRUCTION,

Defendant.

ROBERT R. DI TROLLO  
CLERK, U.S. DIST. CT.  
WESTERN DISTRICT OF TENNESSEE, MEMPHIS

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ORDER DENYING DEFENDANT'S MOTION TO DISMISS  
AND DIRECTING PLAINTIFF TO EFFECT PROPER SERVICE

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Before the Court is the motion of the Defendant, Grinder & Haislip Construction ("Grinder"), to dismiss the Plaintiff's complaint for insufficient service, pursuant to Rules 12(b)(4) and 12(b)(5) of the Federal Rules of Civil Procedure or, in the alternative, to quash service. This action was filed by the pro se Plaintiff, Danny L. Evans, on October 4, 2004 alleging violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. In an order entered January 27, 2005, the Court instructed the Plaintiff to effect service on Grinder, stating that "[t]he plaintiff is responsible for ensuring that service is effected on the defendant pursuant to Fed. R. Civ. P. 4(h)(1). Along with the summons and complaint, service on the [defendant] shall include a copy of this order." (Order Correcting the Docket and Order to Issue Service of Process at 2.) The Plaintiff was further instructed to "familiarize himself with the Federal Rules of Civil Procedure and the local rules of this Court." (Order Correcting the Docket and Order to Issue Service of Process at 2.) He was admonished that "[f]ailure to comply with these requirements . . . may result in this case being dismissed without further notice." (Order Correcting the Docket and Order to Issue Service of

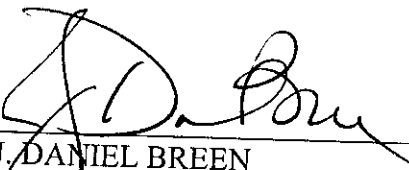
Process at 3.)

In the instant motion, filed on March 23, 2005, the Defendant avers that, on or about February 4, 2005, David Scott, a project superintendent for the Defendant, received by regular mail a cover letter, a summons and a copy of the Court's January 27, 2005 order. Scott states in his affidavit, attached as an exhibit to the motion, that he is not an officer, managing agent, general agent, or registered agent for Grinder. See Aff. of David Scott at ¶ 4.

Rule 4(h)(1) requires that service on a corporation be made "by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . ." Fed. R. Civ. P. 4(h)(1). Alternatively, the corporation may be served "in the manner prescribed for individuals by subdivision (e)(1)" of the Rule. See Fed. R. Civ. P. 4(h)(1). Subsection (e)(1) provides for service "pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State." Fed. R. Civ. P. 4(e)(1). The Tennessee Rules of Civil Procedure require that service by mail be by "registered return receipt or certified return receipt mail" on the defendant. Tenn. R. Civ. P. 4.04(10).

Based on the evidence before it, the Defendant's motion is DENIED. However, the Plaintiff, who failed to respond to the motion, is hereby DIRECTED to effect proper service upon the Defendant, in accordance with the Federal Rules of Civil Procedure, within 30 days of the entry of this order. The Plaintiff is further advised that failure to comply with this order may result in dismissal of his complaint.

IT IS SO ORDERED this 28<sup>th</sup> day of April, 2005.

  
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J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 12 in case 2:04-CV-02790 was distributed by fax, mail, or direct printing on April 29, 2005 to the parties listed.

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Honorable J. Breen  
US DISTRICT COURT